

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-012-14

(UNFAIR LABOR PRACTICE)

SERVICE EMPLOYEES INTERNATIONAL)	
UNION LOCAL 503, OPEU,)	
)	
Complainant,)	
)	RULINGS,
v.)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
LANE COUNCIL OF GOVERNMENTS,)	AND ORDER
)	
Respondent.)	
)	

Marc Stefan, Supervising Attorney, Service Employees International Union, Local 503, Oregon Public Employees Union, Salem, Oregon, represented Complainant.

Steven Schuback, Attorney at Law, Peck, Rubanoff, and Hatfield, Lake Oswego, Oregon, represented Respondent.

On March 17, 2015, Administrative Law Judge B. Carlton Grew issued a recommended order in this matter. The parties had 14 days from the date of service in which to file written objections. See OAR 115-010-0090; OAR 115-035-0050(2). Although Complainant initially filed objections to the recommended order, those objections were later withdrawn. Consequently, we treat this matter as if no objections had been filed.

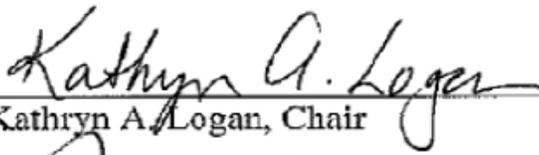
When neither party objects to a recommended order, we generally adopt the recommended order as our final order, and we consider any objections that could have been made to that order unpreserved and waived. *International Brotherhood of Electrical Workers, Local Union No. 659 v. Eugene Water & Electric Board*, Case No. UP-008-13, 25 PECBR 901 (2014). Consistent with that practice, we will adopt the recommended order as our final order in this matter. The final order is binding on, and has precedential value for, the named parties only. *Id.* Despite the precedential

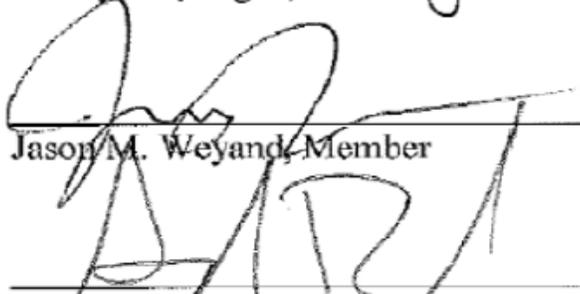
limitations of such a final order, we publish the uncontested recommended order as an attachment to the final order. *Clackamas County Peace Officers Association and Atkeson v. City of West Linn*, Case No. UP-014-13, 26 PECBR 1 (2014).

ORDER

1. The Board adopts the recommended order as the final order in this matter.
2. The complaint is dismissed.

DATED this 30 day of April 2015


Kathryn A. Logan, Chair


Jason M. Weyand, Member


Adam L. Rhynard, Member

This Order may be appealed pursuant to ORS 183.482.

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(UNFAIR LABOR PRACTICE)

SERVICE EMPLOYEES INTERNATIONAL)	
UNION LOCAL 503, OPEU,)	
)	
Complainant,)	RECOMMENDED RULINGS,
)	FINDINGS OF FACT,
v.)	CONCLUSIONS OF LAW,
)	AND PROPOSED ORDER
LANE COUNCIL OF GOVERNMENTS,)	
)	
Respondent.)	
)	

A hearing was held before Administrative Law Judge (ALJ) Larry Witherell on November 25 and 26, 2014, in Eugene, Oregon. The record closed on January 9, 2015, following receipt of the parties' post-hearing briefs. In a periodic reassignment of cases, the matter was transferred to ALJ B. Carlton Grew for issuance of this Recommended Order.

Marc Stefan, Supervising Attorney, Service Employees International Union, Local 503, Oregon Public Employees Union, Salem, Oregon, represented Complainant.

Steven Schuback, Attorney at Law, Peck, Rubanoff, and Hatfield, Lake Oswego, Oregon, represented Respondent.

On March 21, 2014, Service Employees International Union Local 503, Oregon Public Employees Union (Union) filed this unfair labor practice complaint against Lane Council of Governments (Council or LCOG). The complaint, as amended on May 27, 2014, alleges that the Council violated ORS 243.672(1)(a) when it dismissed employee Jane Doe.¹ The Council timely filed an answer to the complaint.

¹A pseudonym.

With the agreement of the parties, the issue presented for hearing was:

Did the Respondent terminate Jane Doe in violation of ORS 243.672(1)(a)?

As set forth below, we conclude that the Council did not violate ORS 243.672(1)(a) when it terminated Doe.

RULINGS

Toward the conclusion of the hearing, the Union requested the production of certain documents. Specifically, the Union wanted the Council to produce internal memoranda that Unit Manager Rachel Jacobsen prepared for herself that relate to the conduct of employees other than Doe. Under the circumstances, the ALJ acted properly within his discretion in denying the Union's request. The Union could have and, given the theory of the Union's case, should have sought such documents prior to the hearing.

The remaining rulings of the ALJ were reviewed and are correct.

FINDINGS OF FACT

1. The Council is a public employer as defined by ORS 243.650(20). The Union is a labor organization as defined by ORS 243.650(13) and the exclusive representative of a bargaining unit that included Doe's position as a call center ADRC screener.²

2. Doe served in the U.S. Army beginning in March 1987 and was honorably discharged in May 2004. She served as a unit supply logistical manager and was released because of a physical disability due to several injuries. She is currently under a 60 percent disability rating. After release from the military, Doe attended the University of Oregon and earned a Bachelor of Science degree in public policy, planning and management.

3. Thereafter, a veterans' counselor requested that Doe complete an internship. As a result, on January 1, 2013, she began an unpaid internship program at the Council through a government program assisting disabled veterans. She completed approximately 400 hours. As an intern, Doe worked for a contract manager performing general office work. Doe also helped with a fundraising project concerning senior connections. She worked on other projects, including data entry for the Older Americans Act (which concerns senior connections).

4. On September 1, 2013, the Council hired Doe as a limited duration or temporary employee. It was a six month temporary position and consisted of various jobs that were patched together to provide Doe with a full-time position. She performed a variety of tasks, from general office work to data entry. The latter responsibility was an information and resource (I&R) position. Doe reviewed documents that had been manually created by other staff members regarding the Oregon Access/Older Americans Act programs. She then verified the information and entered the data into the computer.

²This position is described below.

5. Doe also developed a special project for herself, correcting ten years of data regarding the Oregon Access/Older American Act.

6. In October 2013, Doe began to serve as a backup employee to the Council's newly created adult disability resource connection workgroup called ADRC. As a result, she tried to learn how to give out resource information.

7. In November, Council managers encouraged Doe to apply for a permanent ADRC position. Since the position involved telephone interviewing or screening and then entering data into the computer, they thought Doe would be successful in the position. Initially, Doe did not want to apply because she enjoyed what she was doing. However, the managers emphasized that Doe was employed in a temporary position. Doe eventually applied and was offered the position. However, she was still uncertain whether she wanted the position or whether it would best meet her skills. She was currently in a data entry position that she enjoyed and in which she was performing well. Doe was also concerned about being on the telephone for a major part of the job, but ultimately took the position because of her temporary status. Doe began work in the permanent ADRC position on December 1, 2013, subject to a six month trial service period.

8. ADRC was primarily a busy call center, serving members of the public on a walk-in and phone-in basis. ADRC was a stressful work environment. It served a high volume of client contacts while often understaffed and while creating, implementing, and refining procedures for its work and training its employees. Many of the clients were elderly and had health and cognitive issues.

9. Jacobsen was the ADRC unit manager, overseeing Doe and the ADRC bargaining unit staff. Jacobsen was supervised by Council Program Manager Christy Williams, who in turn reported to Council Division Director Jody Cline and Council Executive Director Brenda Wilson. Council Human Resources Manager Joshua Burstein also assisted Council managers.

10. On December 5, one of Doe's co-workers approached unit manager Jacobsen to report that Doe was abrupt with other ADRC staff. ADRC managers addressed issues related to employee attitude and judgments of others in a general way at the daily staff meeting on December 6.

11. In early December, Doe provided input to a co-worker about handling a client issue. After their discussion, the co-worker decided not to follow all of Doe's suggestions. When Doe learned of this, Doe pointed her finger in the co-worker's face and told the co-worker never to cross Doe or do that again.

12. Shortly before December 20, a co-worker sought to relieve client congestion at the ADRC front desk by taking a completed intake form to an ADRC screener, in this instance Doe. Doe became angry with the co-worker, raising her voice and insisting that the issue raised by the intake form was not appropriate for ADRC. The co-worker was embarrassed by Doe's conduct. Doe's loud, angry voice prompted manager Williams, in an office 10 to 15 feet away, to investigate. Williams told Doe to calm down.

13. Later on December 20, Williams met with Doe and told Doe that her conduct was not appropriate at the workplace and, if repeated, could result in Doe's being asked to leave her employment. Doe acknowledged that her conduct had been inappropriate. After the meeting, Doe sought out the co-worker to apologize.

14. On December 23, Jacobsen and another manager gave Doe a trial service progress report. The managers rated Doe as "not on track for passing Probation" in interpersonal skills, communication skills, and workplace professionalism; "improving, area needs attention" in job/technical knowledge, computer/system knowledge, quantity of work, quality of work output, and focus on customer services. They rated Doe as "on track for passing Probation" for dependability and responsibility, attendance, and initiative and motivation. (Exh. R-4 at 1.)

15. In the narrative of the report, the supervisors wrote that Doe's position required good customer service skills and effective and positive relations with co-workers and community partners. They stated that Doe's "interface with colleagues has been less supportive. When difficulties in negotiating our new systems arise, she raises her voice to co-workers, is defensive, and uses accusatory language." (Exh. R-4 at 2.) The report noted that Council managers "have spoken with [Doe] about these situations and will continue to work with her to assure good customer service and a positive work environment," and "it was explained to [Doe] that if she should have another similar altercation with a coworker, she may be asked to leave. Should her interpersonal and communication skills not improve she will not pass her probationary period." (Exh. R-4 at 2.)

16. On January 22, 2014, Jacobsen made the following notes regarding Doe:

"[Doe] is a conscientious, detail-oriented, and earnest worker. Her skill level with the ADRC-only aspects of the position is good and she is on track to pass probation in her knowledge of Eligibility and Screening policies, procedures, and computer databases. She is still working on finding the sweet spot in screening and often does more than she needs to, which results in taking a longer time than the ADRC screeners have to take given the quantity of calls and also being 'too helpful' with clients (sometimes giving misinformation). [Other staff] are working with her to find better boundaries with this. [Doe] continues to have challenges with being a team player and with her interpersonal communication with colleagues. She is visibly and vocally apprehensive about changes and the need to be flexible with coworkers' differences and the continuously evolving structure of the ADRC. However, given time, she does adjust to change and appears to not hold a grudge. She has not had any angry outbursts." (Exhibit R-5.)

17. Prior to January 31, 2014, Doe was nominated and elected to serve on the Union bargaining committee as an alternate. Rosemary Barton was president of the Union's LCOG sub local. On January 31, 2014, Barton sent out an e-mail announcing the membership of the bargaining team. Barton also put the information on the sub local's blog.

18. On February 5, 2014, Jacobsen recorded that Doe's lead worker had made a

“third voicing of concern regarding [Doe]’s level of professionalism with coworkers and other Unit staff. She reports that [Doe] snaps at coworkers, argues with their answers to questions, and is not a team player when it comes to negotiating break and lunch times. She says that the same is true with her [own] interactions with [Doe]. [Doe] is not accepting of training or new perspectives.” (Exh. R-6.)

19. In early February 2014, unit manager Jacobsen learned that Doe had impaired hearing. Jacobsen asked Doe if she heard well enough to do the job she was in, and what LCOG could do to assist Doe in hearing well enough for the job. The Council ordered a new phone headset and placed a device on employees' computer screens displaying which phones were engaged and what calls are waiting. The device visually alerted staff to pick up a waiting call.

20. On February 12, a co-worker complained to Jacobsen about Doe's conduct. Jacobsen recorded that there was “concern[] regarding [Doe's] level of professionalism with clients, coworkers and other Unit staff.” (Exh. R-7.) The coworker reported to Jacobsen that Doe was “frequently snippy” with co-workers and abrupt with clients, to the point that the co-worker believed that the client “would likely not call the ADRC back after this experience.” (Exh. R-7.) The co-worker stated that Doe's conduct was affecting clients calling in for assistance, co-workers, and the operation of the ADRC.³

21. On February 12, 2014, Union field organizer Tera Martinez wrote to Council Human Resources Manager Burstein, agreeing to meet for bargaining on February 18. In that communication, Martinez identified the Union's bargaining team: sub local president and unit employee Barton, four unit employees, Martinez (committee spokesperson) and Jim Bakken (Union field coordinator for Eugene). Martinez also listed two alternates, one of whom was Doe.

22. On February 14, 2014, unit manager Jacobsen met with Doe about the “concerns expressed by her coworkers.” (Exh. R-8 at 1.) Jacobsen discussed the following issues with Doe:

“1. [Doe] being snippy with coworkers

“a. I talked with [Doe] about reports from coworkers in Support, Eligibility, and ADRC regarding her tone and aggressive manner. [Doe] reported being unaware of this and asked for an example. I talked with her regarding a situation when a Support Staff person was delivering a walk-in slip and she didn't want to take it and then said she would if she had to in an abrupt and snappy manner. [Doe] disputed this, so I asked her about her recollection of the events, which she gave me. When she role played herself, it was the same

³Not all of Doe's co-workers were offended or affected by Doe's conduct, and the record suggests that, in the moment, Doe was unaware of how her conduct was perceived by coworkers and clients. The record also suggests that Doe was not intentionally abrupt and was less angry than she was perceived to be. However, viewed as a whole, the record demonstrates that it was not unreasonable for the Council to terminate Doe's trial service.

aggressive, snappy, and condescending tone. I brought this to her attention and she was unaware she just did it. We talked about techniques for practicing not snapping at coworkers.

“2. [Doe] being abrupt with clients

“a. I started with a client phone call I sat in on with her as an example. Then we talked about how she is feeling on the phone that leads to this. She reported * * * wandering thoughts of clients, the clients’ irritation over the phone, and the pressure she feels to complete the phone screenings. We thought of 3 ways she can remain calm with clients: (1) talk with the client about the importance of completing the screening in order to start the process of receiving benefits, but taking time/breaks in the call for the client to explain themselves prior to redirecting the conversation back to the screening; (2) smiling when talking, even if she felt irritated; (3) ask the client if she can put him/her on hold for a minute, take some deep breathers, and go back to the call.

“3. [Doe] being argumentative

“a. We discussed taking input/feedback from coworkers gracefully instead of refuting their advice immediately.” (Exh. R-8 at 1.)

23. At 9:22 a.m., on February 18, Union sub local president Barton e-mailed Doe and two other employee members of the bargaining team that “Alternate Bargaining Team Members will be able to attend 02-18-14 Bargaining Session without being required to use personal time.” (Exh. R-9 at 3.) At 10:19 a.m., Doe forwarded the e-mail to her supervisor, Rachel Jacobsen, and added, “Hi Rachel, I wanted to forward this to you for your approval. Thank you.” (Exh. R-9 at 3.)

24. At 12:48 p.m., Jacobsen, who had been unaware that Doe was on the Union bargaining team, wrote to Williams, “Can I assume from this that [Doe] is on the bargaining team? Is there a place I could look to see what other staff is on the team, and when I could expect them to be in meetings, so that I can plan call center coverage accordingly[?] We should be fine this afternoon because our ADRC is fully staffed today for the first time this month.” (Exh. R-9 at 2-3.)

25. At 12:58 p.m., Williams forwarded the e-mail to Cline, and added: “Jody, See below and advise. Also, [Doe] is still on probation with areas needing improvement. Is it appropriate she is in bargaining?” (Exh. R-9 at 2.) Williams had no collective bargaining experience, was uncertain what to tell Jacobsen, and did not know whether a probationary employee could serve on a bargaining team. Council management responded that there were no obstacles to Doe’s service on the bargaining team.

26. During the afternoon of February 18, the Union and Council bargaining committees met for their first session. The Council was represented by Cline, Burstein, and Jamon Kent, Council chief operating officer and head of government services. Cline had no previous labor relations or bargaining experience. At the beginning of the meeting, Cline asked, without identifying Doe, whether the Union bargaining team was aware that one of its members was a trial service employee. Cline had not discussed the issue with anyone before asking the question.

Knowing that Doe had been working at the Council in different positions for nearly a year, Cline thought Union officials did not know that Doe was a trial service employee.

27. The Union spokesperson responded by asking for a caucus. The Union seeks to avoid putting bargaining unit members at risk for difficulties arising from bargaining should they be having performance problems. During the caucus, the Union bargaining team wanted to be certain that Doe was comfortable serving on the bargaining committee. Doe assured them that she was.

28. The Council bargaining team also caucused. The other Council team members told Cline that there was no problem with a trial service employee serving on the bargaining team. After the teams reconvened, Union representatives said they had no concerns regarding Doe's service on the bargaining team, and asked whether the Council had such a concern. The LCOG team stated that they did not, and the parties moved on to other issues.

29. On February 19, at 7:28 a.m., Jacobsen e-mailed Cline,

“Hi Jody,
“I'd like to give Doe a more educated reply when she asks for approval to attend bargaining. I think it should be fine, but it would be good to know more than 3 hours in advance (at a minimum by morning huddle at 8:45) so that we can juggle phone time. Was yesterday the only time?” (Exh. R-9 at 2.)

At 8:03 a.m., Cline responded to Jacobsen, with a copy to Williams: “We now know the schedule & she [Doe] can share with you. We did point out that a member of their team is on probation but they wanted to allow that & we didn't object.” (Exh. R-9 at 2.)

30. At 3:11 p.m., on February 19, Jacobsen e-mailed Doe to approve Doe's absence for the bargaining team. Jacobsen also asked, “[c]ould you please give me a calendar of when you will be participating in bargaining so that we can plan for phones accordingly?” (Exh. R-10 at 2.)

31. Meanwhile, Doe had become concerned that her participation on the bargaining team was not being perceived well by ADRC bargaining unit members.⁴ As a result, on February 18 or 19, Doe raised the matter with Jacobsen. Doe asked whether she should step down from the committee. Jacobsen stated that she could not tell Doe what to do.

32. On February 25, 2014, a co-worker told Doe that she could not talk to a third party about a client without the client's permission. Doe then had a heated confrontation with the co-worker. The co-worker, a non-confrontational person who used a wheelchair, turned away and rolled back towards her cubicle, but Doe continued to argue with her in a raised voice. Doe then turned to another co-worker and accused her and other ADRC employees of always trying to prove Doe wrong. Another co-worker tried to defuse the incident with humor by asking whether he needed to get out boxing gloves.

⁴Upon learning of Doe's proposed absence for bargaining, Doe summed up the attitude of her co-workers as, “great – now we have to answer *her* phone calls.” (Doe Testimony, emphasis in testimony.)

33. A co-worker reported the incident to a supervisor. Jacobsen also discussed the incident with the lead worker, and at least one co-worker, who stated that, according to Jacobsen's notes, "this is an everyday occurrence b/w all of them & [Doe] & that they all watch what they say w/ [Doe] because of her treatment of them." (Exh. R-12.)

34. Around this time, Doe told the lead worker that she feared she was not going to pass her probationary period. The lead worker tried to offer reassurance, but also stated that everyone needs to be considerate and respectful in their communications with coworkers.

35. By the end of February 2014, Jacobsen had two major concerns about Doe. The first was her interactions with clients. Typically, an individual's contact with ADRC is the first time they are seeking services. This is because ADRC is the resource for other agencies as well as providing its own resources and services. As a result, the initial telephone call is important to ensuring that the caller gets the necessary and appropriate services. Jacobsen had personal knowledge and co-worker reports about Doe's treatment of client callers. Jacobsen had become concerned about Doe's interactions with those clients. She believed that Doe's treatment of callers was efficient, but not effective in getting the callers to accept needed services. She believed that Doe's tone and the overall way she treated callers was not appropriate or proper. As a result, Jacobsen believed that the clients would likely not call back or pursue needed services after speaking with Doe.

36. Jacobsen was also concerned about Doe's effect on her co-workers' effectiveness as a team. ADRC was a busy unit and was designed and intended to operate as a team. Failure to operate as a team would prevent ADRC from fulfilling its function. Jacobsen believed that the relationship between Doe and her co-workers had become untenable.

37. Jacobsen met with Executive Director Wilson, Division Director Cline, Program Manager Williams, and Human Resources Manager Burstein. During the meeting, the managers reviewed Doe's treatment of clients. The managers considered Jacobsen's personal experience and reports from coworkers about Doe's treatment of clients on the telephone.

38. The managers discussed the boxing glove incident and concluded that it was the type of conduct that Williams had previously told Doe that the Council would not tolerate, and that if it occurred again Doe would be asked to leave. The managers were concerned that Doe's interaction with other staff was not respectful and was not contributing to the work environment that management desired and considered necessary for the effective operation of ADRC. The Council managers concluded that Doe was not a good fit for the ADRC caseworker position, based on her personality and the type of work required by her position.

39. On March 6, 2014, human resources manager Burstein prepared the dismissal letter for Doe. The Council's intention was that Burstein and ADRC manager Jacobsen would meet with Doe that day and explain her dismissal. Burstein was also to provide Doe with her final paycheck and information about post-employment benefits, such as COBRA. However, Doe was out ill on

March 6. Jacobsen and Burstein met with Doe on March 7 in Jacobsen's office. Jacobson explained that the reason for Doe's termination was due to her unacceptable interpersonal relationship with the other staff members, and that Doe was not a team player. Burstein then provided Doe with the letter containing the check and benefit information.

40. Tensions in the ADRC work unit decreased significantly after Doe's separation. Doe's absence was a significant cause of the reduction in tension.

CONCLUSIONS OF LAW

1. This Board has jurisdiction over the parties and the subject matter of this dispute.

Standards for Decision

The Union contends that the Council's actions terminating Doe violated ORS 243.672(1)(a) because these actions were taken in retaliation for Doe's participation on the Union's bargaining team. ORS 243.672(1)(a) makes it unlawful for a public employer to interfere with, restrain, or coerce employees "in" the exercise or "because of" the exercise of rights guaranteed in ORS 243.662. ORS 243.662 guarantees public employees "the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining with their public employer on matters concerning employment relations."

To determine if an employer violated the "because of" portion of subsection (1)(a), we examine the employer's reason for the disputed action. If the employer acted "because of" an employee's exercise of rights protected by the Public Employee Collective Bargaining Act (PECBA), the employer's actions are unlawful. In order to show a violation of the "because of" prong of subsection (1)(a), it is not necessary to demonstrate that an employer acted with hostility or anti-union animus. Nor must a complainant prove that the employer was motivated by an intent to restrain or interfere with protected rights. A complainant need only show that the employer took the disputed action because an employee exercised a protected right. *Amalgamated Transit Union, Division 757 v. Tri-County Metropolitan Transportation District of Oregon*, Case No. UP-039-10, 25 PECBR 325, 339 (2012).

When we analyze an employer's actions under the "in the exercise" portion of subsection (1)(a), the employer's motive is irrelevant. We focus only on the effect of the employer's actions on the employees. If the employer's conduct, when viewed objectively, has the natural and probable effect of deterring employees from engaging in PECBA-protected activity, the employer violates the "in the exercise" prong of subsection (1)(a). A violation of the "in the exercise" portion of subsection (1)(a) may be either derivative or independent. An employer who commits a "because of" violation also generally violates the "in the exercise" portion of the statute because the natural and probable effect of the employer's unlawful action is to chill the exercise of protected rights. An employer's actions may also independently violate the "in the exercise" prong, typically when the employer makes threats that are directed at protected activity. 25 PECBR at 339.

We first consider whether the Council decided to end Doe’s employment “because of” Doe’s exercise of protected rights. We begin our analysis by examining the record to determine the reason the Council acted. This is a fact determination. We then decide if the Council’s reasons were lawful or unlawful. If the reasons were lawful, we will dismiss the allegation. If the reasons are unlawful or a lawful reason is a pretext for unlawful conduct, we will find a violation of the “because of” prong of subsection (1)(a). If we find the employer acted for both lawful and unlawful reasons, we apply a mixed motive analysis. Under that analysis, we determine whether the Council’s unlawful motivation—as one of two or more coinciding reasons for the employment action—was a sufficient factor to attribute the decision to it. In other words, we determine whether the employer would not have taken the disputed action but for the unlawful motive. 25 PECBR at 339-340.

The Union contends that the Council made the decision to end Doe’s employment because of her participation on the Union bargaining team. There is no dispute that participation on a labor representative’s bargaining team is protected activity. The Council asserts, however, that it acted for lawful reasons: Doe’s performance during her trial service period included repeated instances of conduct which were inappropriate, counterproductive to ADRC’s goals, and reflected her inability to integrate into this particular work environment.

We conclude that the motives for the Council’s actions were lawful. The record shows that on multiple occasions, Doe was loud, blunt, angry, argumentative, and disrespectful of her co-workers, upsetting not only the recipients of her aggressive tone but also those who witnessed it. The record shows that Doe was a poor fit for this work environment and was not capable of a prompt adaptation to the corrections she received. While the Union argues that the Council’s failure to use more corrective measures showed bias, the Council had no requirement to use techniques relevant to progressive discipline for a trial service employee. In addition, Doe was well aware of her failure to meet the Council’s expectations. The Council had no reason to continue to expend effort and endure further office disruption, disaffected clients, and lowered employee morale in order to work with Doe to temper her occasional angry outbursts at co-workers. Nor did the Council have an obligation to allow the effects of Doe’s conduct to extend to the end of her scheduled trial service period.

The Union also points to Council management employees’ raising the issue of Doe’s trial service status with the Union bargaining team. The record does not support a finding that these actions reflected an animus by the managers. Instead, we conclude that it reflected surprise and some confusion on some Council managers’ part that the Union would consider it prudent or appropriate to place a struggling trial service employee on this bargaining team. Once the Union informed the Council that they were aware of Doe’s trial service status, the Council accepted the Union’s choice.⁵

We also conclude that the Council did not violate the “in the exercise” prong of subsection (1)(a). Doe’s public and documented interactions with her fellow employees reflected

⁵Because a labor organization has substantial incentives to demonstrate commitment to its bargaining team members, and a natural desire to defend its decisions, placement of a trial service employee on a union bargaining team will almost inevitably result in the filing of an unfair labor practices complaint if that employee is deemed to have failed trial service.

her inability to experience the pressures of this particular job without expressing anger, and to fit into this particular work environment. Therefore the Council's conduct in terminating Doe from trial service, when viewed objectively, does not have the natural and probable effect of deterring employees from engaging in PECBA-protected activity such as serving on the Union bargaining team. We will dismiss the Complaint.

PROPOSED ORDER

The complaint is dismissed.

SIGNED AND ISSUED 17 March 2015.

A handwritten signature in black ink, appearing to be 'B. Carlton Grew', written over a horizontal line.

B. Carlton Grew
Administrative Law Judge

NOTE: The Employment Relations Board's rules provide that the parties shall have 14 days from the date of service of a recommended order to file specific written objections with this Board. (The "date of filing objections" means the date objections are received by this Board; "the date of service" of a recommended order means the date this Board mails or personally serves it on the parties.) A party that files objections to a recommended order with this Board must simultaneously serve a copy of the objections on all parties of record in the case and file with this Board, proof of such service. This Board may disregard the objections of a party that fails to comply with those requirements, unless the party shows good cause for its failure to comply. (See Board Rules 115-010-0010(5) and (6); 115-010-0090; 115-035-0050; 115-045-0040; and 115-070-0055.)